IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Criminal Writ Petition No.2921 of 2005

Shri Sujit Suresh Menpal Petitioner

Vs.

Shri A.N.Roy & ors. Respondents

Mr.U.N.Tripathi for petitioner.

Mr.D.S.Mhaispurkar, APP for State.

CORAM: B.H.MARLAPALLE & NARESH H.PATIL,JJ.

September 28, 2006.

ORAL JUDGMENT (PER B.H. MARLAPALLE,J.)

1. This petition filed under Article 226 of the Constitution assails the order of detention passed by the Commissioner of Police, Brihan Mumbai on 7/10/2005 under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons, Act, 1981 (for short "the MPDA Act"). The said order was served on the detenu on 8/10/2005 and subsequently the detention period has been confirmed for a period of one year and thus it would expire on 7/10/2006. This petition was filed on 1/12/2005 and

it came to be admitted on 6/12/2005.

2. The petitioner is the resident of Sonapur, Jay Hind Nagar, Mankhurd, a suburb of Mumbai city. Along with the impugned detention order a copy of the grounds of detention was also served on the detenu. He had sent his representation on 28/11/2005 i.e. before this petition was filed and the State Government has rejected the representation on 7/12/2005 and the same was communicated to the detenu on 8/12/2005. Reference under Section 10 of the MPDA Act was made to the Advisory Board on 17/10/2005 and the Advisory Board by its opinion dated 11/11/2005 found sufficient reasons in support of the order of detention as per its report dated 14/11/2005. The report of the Advisory Board was placed before the State Government as per the Rules of Business framed by the Government of Maharashtra on 17/11/2005 and the State Government confirmed the same on that day.

3. Though the impugned order has been challenged on more than one grounds, Mr. Tripathi, the learned counsel for the petitioner has placed emphasis on two grounds viz. (i) the delay caused in passing the impugned order on 7/10/2005 though C.R. No.26/05 was

registered against the detenu in January 2005 and (ii) the delay caused in recording in-camera statements on 17/8/2005 and 13/8/2005. When CR No.26/05 was registered in January 2005, the detenu was arrested on 25/4/2005 in connection with the said CR and he was released on bail on 28/4/2005. As per Mr.Tripathi in the affidavit-in-reply filed by the Detaining Authority as well as on behalf of the State Government the delay caused in passing the impugned order has neither been explained nor the said delay is justified on any count and if the delay has not been explained, the impugned order is required to be quashed and set aside. In support of these contentions Mr.Tripathi has relied upon the following decisions of this Court :

. (i) Ashok Kumar @ Ashokankumar Kunjamani Thewar @ Thiyar @ Kittu vs. The Commissioner of Police & ors. **[2002 All MR (Cri) 22** ; (ii) Austin Williamb Luis Pinto vs. Commissioner of Police, Greater Mumbai & ors. **[2005 All MR (Cri) 28]** and (iii) Haroon Mohommed Naim Choudhary vs. Shri A.N. Roy, Commissioner of Police, Brihan Mumbai & ors. (Criminal Writ Petition No.260 of 2006 decided and allowed on 28/7/2006 - unreported as yet).

4. Mr.Mhaispurkar, the learned APP by referring to the affidavits-in-reply of Mr. A.N. Roy, Commissioner of Police, Brihan Mumbai, Mr.Dattatraya Baburao Borhade, Under Secretary, Government of Maharashtra, Home Department and Mr.Madhukar N. Shinde, Police Sub Inspector attached to the Deonar Police Station submitted that the three decisions of this Court relied upon by Mr. Tripathi and which have followed the law laid down in the case of Pradeep Nilkanth Paturkar vs. S. Ramamurthi **AIR 1994 SC 656]** are not applicable to the facts of the present case. It was submitted that the delay, if any, has been properly explained by the affiants and, therefore, there is no case made out to interfere with the impugned order of detention. Mr.Mhaispurkar relied upon the following decisions:

. (i) Deepak Govind Murudkar vs. R.H. Mendonca **[2001 All MR (Cri) 357]**, (ii) Santosh @ Dankya Subhash Gaikwad vs. D.N.Jadhav, Commissioner of Police & ors. **[2006 (1) Mh.L.J. 88]** and (iii) Collector and District Magistrate, W.G. District, Eluru, A.P. and ors. **[(2005) 3 SCC 666]**.

. In the case of Harun Mohommed Naim Choudhary (Supra) the detention order was passed on one CR registered against the detenu and two in-camera statements recorded. The CR was registered against the detenu on 24/1/2005 and he was taken in custody on 11/2/2005. He was released on bail on 28/4/2005. The in-camera statements were recorded within two to four days of the release of the detenu i.e. on 30/4/2005 and 2/5/2005. In both the statements of "A" and "B" the incidents that were alleged to have occurred involving the detenu were of January 2005. Whereas the detention order was passed on 7/7/2005 and, therefore, this Court held that there was a delay and the livelink between the activities of the detenu was snapped. Resultantly this Court held that the in-camera statements were nothing but to fill in the gap between 24/1/2005 and 7/7/2005 and the petition was allowed.

. In the case of Austin William Luis Pinto (Supra) the detention order was passed on 30/9/2003 under Section 3(1) of the MPDA Act on the basis of the CR No.119 of 2003 registered with the Mulund police station and two in-camera statements of witnesses "A" and "B". The detenu was arrested and

was released on bail on 2/7/2003 but he availed the bail only on 5/7/2003. The CR was registered sometimes in May 2003 in respect of the incident that had taken place on 1/5/2003, the in-camera statements were recorded on 12/7/2003 and 14/7/2003. In both these statements the incidents described by the deponents / complainants against the detenu were pertaining to the incidents that had taken place in April 2003 before the FIR was registered against the detenu. Following the law laid down in Pradeep Nilkanth Paturkar's case (Supra) the Division Bench of this Court while allowing the petition held :

> "...There is no explanation as to why the in-camera statements were not recorded even though the detenu was in custody from 1/5/2003 to 2/7/2003. Considering the fact that the incident clearly affecting the law and order has been cited as the first ground, in the facts of this case, in our opinion, these delayed statements have an adverse impact on the detention order. Moreover, we find that the proposal was submitted on 26/7/2003 and even the period between 26/7/2003 and 30/9/2003 has also not been properly

explained. The cumulative effect of this is that the detention order is also vitiated on account of delay in issuing of the order. In the result therefore the impugned order will have to be set aside..."

. This Court was satisfied that the delay of more than two months between 26/7/2003 and 30/9/2003 was not explained and the in-camera statements recorded on 2/7/2003 and 5/7/2003 were in respect of the incidents that had taken place in April 2003. It was under these circumstances the Division Bench held that the detention order was unsustainable. In the case of Ashok Kumar (Supra) two CRs were registered on 3rd January 2000 and 18th February 2000 respectively. The detenu was arrested in April 2000 and the detention order was passed on 30/11/2000. There were no in-camera statements recorded in that case and the detention order was based on these two CRs i.e. CR No.23/2000 and 4/2000. This Court on analysis of the events and the affidavits-in-reply filed by the authorities held that the delay caused in the following two pockets was not explained:

(a) between 18/2/2000 and 2/8/2000 and
(b) between 12/8/2000 and 12/10/2000.

5. Let us, therefore, examine whether the facts of the case in hand are comparable to the facts in the above referred three cases allowed by this Court. As noted earlier CR No.26/2005 was registered on 16/1/2005 for offences punishable under Sections 385, 506(II) read with Section 34 of IPC with the Deonar Police Station. The case has been investigated and charge-sheet has been filed on 10/5/2005. The first in-camera statement of witness "A" was recorded on 13/8/2005 and the second in-camera statement of witness "B" has been recorded on 17/8/2005. The CR registered was in respect of the incident that has taken place on 16/1/2005. No doubt the detention order was passed on 7/10/2005 and served on the detenu on 8/10/2005 and undoubtedly the detention order is based on CR No.26/2005 and the two in-camera statements as noted hereinbefore, if the in-camera statements had spoken about the incidents that had taken place in January or for that matter in February or before the detenu was arrested and released on bail, it was permissible for the petitioner to rely upon the above referred three decisions and to state before us that the livelink between the incidents on the basis of which the detention order was passed and the purpose of detention was broken and in fact the

reasons had become stale as on 7/10/2005. But such is not the case. We have gone through the in-camera statements of Witnesses "A" and "B" after perusal of the grounds mentioned in para 5(b)(i) and 5(b)(ii) of the grounds for detention as communicated and served on the petitioner along with the impugned order of detention. Witness "A" has stated the incident of July 2005 and which involved the petitioner and his brother. The victim was none less than the informant himself and he described of the incident that had taken place in the third week of July 2005 at about 6 p.m. while he was sitting in his shop. This was an incident of extortion and creating terror in the neighbouring area i.e. Mankhurd, PMGP Colony. The second in-camera statement was of witness "B". It was recorded on 17/8/2005 and the informant was again the victim himself of the alleged reign of terror spread by the petitioner and his brother. The incident described had allegedly taken place in the first week of August 2005 at about 7.30 p.m. and at the threat of knife an amount of Rs.1500/- was recovered from the informant’s shop by the brother of the petitioner who was accompanying the petitioner and the shop owners who had collected around the informant’s shop were threatened to leave

immediately. Both the informants also stated that they were threatened not to report to the police failing which they would be eliminated. The verification of both the statements which were recorded by the API was done by the Asst. Police Commissioner, Deonar Division, Mumbai.

6. It is, therefore, clear that the detention order which is under challenge in this petition is based on the FIR registered in respect of an incident that had allegedly taken place on 16/1/2005, the first in-camera statement dated 13/8/2005 in respect of an incident that had taken place in the third week of July 2005 and the second in-camera statement dated 17/8/2005 in respect of an incident that had taken place in the first week of August 2005. The in-camera statements were not of the period prior to the petitioner being arrested and released on bail or as so stale that the livelink between the impugned order and the incidents had been snapped. It was contended by Mr. Tripathi that what is required to be seen is the period between the registration of the CR and the date of the in-camera statements having been recorded. We are afraid this cannot be accepted per se and the facts of each case will have to be

examined separately. In the instant case the petitioner has been labelled as a dangerous person within the meaning of Section 2 (b-1) of the MPDA Act. A "dangerous person" means a person who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959. Both the in-camera statements recorded state that the petitioner was carrying a knife in his pocket and the informants were threatened at the knife point and told that if they did not part with the money as demanded, they would be eliminated. The first incident of extortion, as noted above, is of July 2005 and the second one is of August 2005. Thus the impugned detention order is based on the events that had taken place allegedly in January 2005, July 2005 and August 2005. In these typical facts of the case in hand the law laid down in the case of Pradeep Nilkanth Paturkar (Supra) cannot be made applicable and the impugned detention order cannot be examined on the point of delay with reference to the date of registration of the CR with the Deonar police

station. No doubt in his arguments before us Mr. Mhaispurkar relied upon the provisions of Section 5A of the MPDA Act, but we do not deem it necessary to refer to the said provisions more so when both the in-camera statements stated about two different incidents alleged to have taken place in July and August 2005. It is also well established in law that the in-camera statements recorded, on their own, can form the basis for a valid detention order under the MPDA Act.

7. The affidavit-in-reply filed on behalf of the State Government has also clarified that the representation dated 28/11/2005 was received on the same day in the Home Department and parawise remarks were called on 29/11/2005 from the Detaining Authority, they were received on 1/12/2005 and scrutinised and processed on 3/12/2005. The Under Secretary put his endorsement on 5/12/2005, 4/12/2005 was a holiday and the Deputy Secretary forwarded the representation to the Additional Chief Secretary for his consideration on 7/12/2005 and it was rejected on the same day. The detenu was communicated the same on 8/12/2005.

8. We are, therefore, satisfied that the challenge to the impugned order of detention is unsustainable and the same fails. The petition is, therefore, dismissed. Rule discharged.

(NARESH H. PATIL,J.) (B.H.MARLAPALLE,J.)